

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORIO MORENO MONZANO,

Petitioner, No. CIV S-01-2094 GEB DAD P

vs.

C. K. PLILER, Warden, et al.,

Respondents. ORDER

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 26, 2005, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate

1 which specific issue or issues satisfy" the requirement. 28
2 U.S.C. § 2253(c) (3).

3 A certificate of appealability should be granted for
4 any issue that petitioner can demonstrate is "'debatable among
5 jurists of reason,'" could be resolved differently by a different
6 court, or is "'adequate to deserve encouragement to proceed
7 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
8 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

9 Petitioner has made a substantial showing of the denial
10 of a constitutional right in the following issues presented in
11 the instant petition: (1) whether his Fifth Amendment right to
12 remain silent was violated by the introduction into evidence of
13 his confession to police; (2) whether the trial judge violated
14 his right to a fair trial when he improperly responded to a jury
15 question; and (3) whether the trial court erred in failing to
16 investigate the possibility of juror misconduct.

17 Accordingly, IT IS HEREBY ORDERED that a certificate of
18 appealability is issued in the present action.

19 DATED: June 23, 2005

20 /s/ Garland E. Burrell, Jr.
21 GARLAND E. BURRELL, JR.
22 United States District Judge

23
24 ¹ Except for the requirement that appealable issues be
25 specifically identified, the standard for issuance of a
26 certificate of appealability is the same as the standard that
applied to issuance of a certificate of probable cause.
Jennings, at 1010.